

JAMES DARBY

IBLA 86-407

Decided June 25, 1986

Appeal from a decision by the Wyoming State Office, Bureau of Land Management, returning unapproved an assignment of record title in oil and gas lease W 87411.

Affirmed.

1. Administrative Procedure: Generally -- Notice: Constructive Notice -- Oil and Gas Leases: Reinstatement -- Rules of Practice: Generally

A document sent certified mail by BLM to a person at his last address of record is considered to have been constructively served on that person at the time of return by the Postal Service of the undelivered certified letter, and such constructive service is equivalent in legal effect to actual service of the document. An oil and gas lessee's last address of record is that stated on the lease application form, unless the lessee has filed written notice of a change of address with the issuing BLM office. Thus, the time for filing a petition for reinstatement of a terminated oil and gas lease begins on the date the notice of termination was returned to BLM as undeliverable after it was sent to the lessee's last address of record, and expires 60 days later.

2. Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Reinstatement

Where the record titleholder of an oil and gas lease fails to request reinstatement within 60 days of constructive service of a notice of termination of the lease, reinstatement is not authorized under governing statutory and regulatory provisions, and the termination of the lease becomes final. In these circumstances, BLM properly refuses to approve any pending

assignments, as there is no lease interest left to be assigned.

3. Notice: Generally -- Oil and Gas Leases: Assignments or Transfers --
Oil and Gas Leases: Reinstatement

BLM is obligated to notify only the lessee of record about the termination of an oil and gas lease. If the lessee has created an interest in any other person by agreement, the prospective assignee must look to the lessee to provide notice of the termination.

APPEARANCES: James Darby, Gaithersburg, Maryland, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

James Darby appeals from a January 21, 1986, decision of the Wyoming State Office, Bureau of Land Management (BLM), returning unapproved an assignment of record title in oil and gas lease W 87411. This lease was originally leased competitively to Terry L. James effective on January 1, 1984, for 40 acres in Weston County, Wyoming. On July 29, 1984, an assignment of 100 percent of record title to the lease from Terry James to James Darby was filed for approval with BLM.

No rental was received for lease W 87411 on or before January 1, 1985, the anniversary date of the lease. Accordingly, on April 29, 1985, BLM notified James, the lessee of record, that lease W 87411 had terminated by operation of law. BLM also advised James of his right to seek reinstatement of the lease under Class I and Class II statutory provisions. This notice was sent to the address on James' lease application, but was returned by the Postal Service (USPS) to BLM as undeliverable on May 13, 1985, marked "no forwarding order on [file,] unable to forward."

BLM issued a second notice of termination to James at the same address on September 6, 1985. Although this notice was not returned by the USPS, there is no proof that he received this notice. In fact, it appears certain that he did not receive it, as a letter to the same address from BLM dated November 19, 1985, asking James to confirm that he had received the notice, was returned as undeliverable on November 2, 1985, also marked "no forwarding order on file[,] unable to forward." It is thus evident that the USPS was unable to forward mail to James throughout the time in question in this matter.

On January 21, 1986, BLM sent notice to Darby that the pending request for assignment was unapproved, as the underlying lease had terminated by operation of law for failure to pay annual rental timely. BLM also advised Darby that the \$ 25 filing fee for the assignment was not refundable. Although BLM improperly failed to notify Darby of his right to appeal this decision, 1/ he filed a timely notice of appeal to this Board.

1/ BLM's decision to return the request for assignment to Darby unapproved was clearly "a decision of an officer of the Bureau of Land Management" that

It is axiomatic that, when an oil and gas lease terminates by operation of law, all right and title to the mineral interests granted by that lease end, and also that, unless the lease is reinstated, the termination of this lease interest is final. The provisions governing reinstatement establish a specific timeframe within which reinstatement may be sought by requiring that the petition be filed not later than 60 days after the lessee of record receives notice that the lease has terminated by operation of law. 43 CFR 3108.2-2(a)(3), and 3108.2-3(b)(1)(i).

[1] Although James, the lessee of record here, evidently never received actual notice that the lease had terminated, he had constructive notice of this fact. A document that is sent certified mail by BLM to a person at his last address of record is considered to have been constructively served on that person at the time of return by the Postal Service of the undelivered certified letter, and such constructive service is equivalent in legal effect to actual service of the document. Reg Whitson, 55 IBLA 5 (1981); James W. Heyer, 2 IBLA 318 (1971); see 43 CFR 1810.2. A lessee's last address of record is that stated on the lease application form, unless the lessee has filed written notice of a change of address with the issuing BLM office. See Victor M. Onet, Jr., 81 IBLA 144 (1984). Thus, the time for filing a petition for reinstatement of the instant lease began on May 13, 1985, the date the first notice of termination was returned to BLM as undeliverable after it was sent to James' last address of record, and expired 60 days later without a petition having been filed.

[2] Where the record titleholder fails to request reinstatement within the time allowed, reinstatement is not authorized under governing statutory and regulatory provisions, and the termination of the lease becomes final. In these circumstances, BLM must refuse to approve any pending assignments, as there is no lease interest left to be assigned. Howard H. Vinson, 90 IBLA 280, 285 (1986).

[3] Appellant Darby, in his statement of reasons, notes that he received no communication from BLM during the pendency of his request for approval of the assignment until the January 21, 1986, notice. BLM is obligated to notify only the lessee of record about the termination of an oil and gas lease. If the lessee has created an interest in any other person by agreement, the prospective assignee must look to the lessee to provide notice of the termination. Tenneco Oil Co., 63 IBLA 339, 341 (1982); see KernCo Drilling Co., 71 IBLA 53, 61 (1983). 2/

fn. 1 (continued)

"adversely affected" a "party to a case." Accordingly, there is no question that, under 43 CFR 4.410(a), Darby had the right to appeal this decision. The Board has expressly ruled that a prospective assignee has standing to appeal in these circumstances. Tenneco Oil Co., 63 IBLA 339, 341 (1982). BLM's failure to advise Darby of his right to appeal was improper.

2/ In a case similar to this, PRM Exploration Co., 91 IBLA 165 (1986), the Board observed that it is within BLM's authority to adopt a rule whereby unapproved assignees of record would also receive notices that affect the interest of such assignee. 91 IBLA at 165, 171.

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Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Wm. Philip Horton
Chief Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

